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# **Part I — Introduction**

## **13.1 The Dispositional Phase of Child Protective Proceedings**

\*See Chapters 10 (pleas) and 12 (trials).

The adjudicative phase of child protective proceedings ends following acceptance by the court of a plea by the respondent-parent, or, following a trial, a finding that the child is or is not within the jurisdiction of the court. *In re Miller*, 178 Mich App 684, 686 (1989), and *In re Mathers*, 371 Mich 516, 532–33 (1963).\*

\*See Chapters 16 (dispositional review hearings), 17 (permanency planning hearings), and 18 (hearings on termination of parental rights).

In child protective proceedings, the dispositional phase encompasses initial dispositional hearings, dispositional review hearings, permanency planning hearings, reviews of the progress of children not removed from home, and hearings on supplemental petitions requesting termination of parental rights. See MCR 5.973(A)–(D).\*

No right to jury trial exists during the dispositional phase of proceedings, even where a supplemental petition is subsequently filed containing new allegations of abuse or neglect. *In re Mathers*, 371 Mich 516, 531 (1963), *In re Hubel*, 148 Mich App 696, 699 (1986), and *In the Matter of Rebecca Oakes*, 53 Mich App 629, 632 (1974).

## 13.2 Purpose of Initial Dispositional Hearings

An initial dispositional hearing is conducted to determine measures to be taken by the court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following a plea or trial that the child comes within its jurisdiction. MCR 5.973(A). If the court finds that the child concerning whom a petition has been filed is not within the court's jurisdiction, the court must enter an order dismissing the petition. MCL 712A.18(1); MSA 27.3178(598.18)(1).

If the child has been found to be within the jurisdiction of the court, the court may order one or more of the dispositional alternatives contained in MCL 712A.18(1); MSA 27.3178(598.18)(1), that are appropriate for the welfare of the child and society in view of the facts proven and ascertained. MCR 5.973(A)(5)(a) and MCL 712A.18(1); MSA 27.3178(598.18)(1).\*

If placement was ordered following the preliminary hearing, services may have already been provided to the parent and child. The agency charged with the care and supervision of the child must submit an Initial Service Plan setting goals for the parent and child. However, participation in this initial plan is voluntary. See MCR 5.965(C)(6)(b) and MCL 712A.13a(8)(b) and (c); MSA 27.3178(598.13a)(8)(b) and (c). If the child is found to be within the court's jurisdiction, the court may order participation in the Case Service Plan, and substantial failure to comply with the plan may result in termination of parental rights. See MCR 5.973(A)(5)(b), MCR 5.973(C)(4)(b), and MCL 712A.19a(4); MSA 27.3178(598.19a)(4).\*

In any case in which a child is removed from the control of his or her parents, the child must be placed in care as nearly as possible equivalent to the care that should have been given to the child by his or her parents. MCL 712A.1(3); MSA 27.3178(598.1)(3).

\*See Section 13.24, below, for a list of these dispositional alternatives.

\*See Chapter 8 (pretrial placement) and Section 13.19, below (Case Service Plans).

## 13.3 Placing the Child in the Temporary or Permanent Custody of the Court

If the court takes custody of the child, it must state in its order of disposition, or a supplemental order of disposition,\* whether the child is placed in the temporary or permanent custody of the court. MCL 712A.20; MSA 27.3178(598.20).

If the child is placed in the temporary custody of the court, however, the court may not enter a supplemental order of disposition providing for permanent custody of the child, or any other order of disposition, except pursuant to issuance of summons or notice or at a "rehearing" or review hearing pursuant to MCL 712A.19; MSA 27.3178(598.19). MCL 712A.20; MSA 27.3178(598.20).\*

\*See Section 13.37, below, for a discussion of supplemental orders of disposition.

\*See Sections 5.4 (summons) and 5.6 (persons entitled to notice of review and termination hearings).

\*See Chapters 18 (termination of parental rights) and 15 (rehearings).

\*See Chapter 18 for additional procedural requirements.

\*See Section 18.4 for a discussion of standing to file petitions requesting termination of parental rights. In certain cases, FIA is required to request termination at the initial dispositional hearing. See Section 2.25.

\*See Sections 18.27–18.40 for discussion of these statutory criteria.

If the child is placed in the permanent custody of the court, all parental rights are terminated, though such rights may be reinstated by a supplemental order of disposition entered following rehearing under MCL 712A.21; MSA 27.3178(598.21). MCL 712A.20; MSA 27.3178(598.20).\*

Evidence of temporary neglect may allow the court to take temporary jurisdiction over the child; however, “[t]here must be real evidence of long-time neglect, or serious threats to the future welfare of the child” for the court to take permanent custody of the child and terminate parental rights. *Fritts v Krugh*, 354 Mich 97, 116 (1958).

## 13.4 Termination of Parental Rights at the Initial Dispositional Hearing\*

The court may terminate parental rights at the initial dispositional hearing if termination was requested in an original or amended petition. MCR 5.974(A)(2).\*

The court must order termination of a respondent’s parental rights at the initial dispositional hearing if:

- (1) the original, or amended, petition contains a request for termination;
- (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b); MSA 27.3178(598.2)(b);
- (3) the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition:

(a) are true,

(b) justify terminating parental rights at the initial dispositional hearing, and

(c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3);\*

unless the court finds that termination of parental rights is clearly not in the best interest of the child. MCR 5.974(D)(1)–(3) and MCL 712A.19b(4) and (5); MSA 27.3178(598.19b)(4) and (5).

The parent has the burden of *going forward with evidence* showing that termination of parental rights is clearly not in the child’s best interest. Therefore, if the parent produces no evidence that termination is clearly not in the child’s best interest, the court must terminate parental rights. The burden of proof, however, remains with the party seeking termination. MCL 712A.19b(5); MSA 27.3178(598.19b)(5), *In the Matter of LaFlure*, 48 Mich

App 377, 381–88 (1973), and *In re Hall-Smith*, 222 Mich App 470, 472–73 (1997).

### 13.5 Suspension of Parenting Time When Termination of Parental Rights Is Requested at the Initial Dispositional Hearing

If a petition requesting termination of parental rights has been filed, parenting time for a parent who is the subject of the petition is automatically suspended and, except as described below, remains suspended at least until a decision is issued on the termination petition. If, however, a parent whose parenting time has been suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate. MCL 712A.19b(4); MSA 27.3178(598.19b)(4).

Unless parenting time, even if supervised, would be harmful to the child as determined by the court under MCL 712A.13a; MSA 27.3178(598.13a),\* or otherwise, the court must order at the dispositional hearing a schedule for regular and frequent parenting time between the child and his or her parent. Such parenting time must occur not less than once every seven days. MCL 712A.18f(3)(e); MSA 27.3178(598.18f )(3)(e).

\*See Section 8.9.

The supervising agency must institute a flexible schedule to allow for the occurrence of supervised in-home visitation outside of the traditional workday to accommodate the schedules of the persons involved. MCL 722.954b(3); MSA 25.359(4b)(3).

## Part II — Procedural Requirements

### 13.6 Referees Who May Preside at Dispositional Hearings

The parties have a right to a judge at a hearing on the formal calendar. MCR 5.912(A) and MCR 5.903(A)(6) (definition of “formal calendar” includes dispositional hearings). Thus, the parties have the right to a judge at a dispositional hearing. However, unless a party has demanded a *trial* by judge or jury, a referee may conduct the trial and further proceedings through the dispositional phase. MCR 5.913(B).

Only referees who are licensed to practice law in Michigan may conduct protective proceedings other than preliminary inquiries, preliminary hearings, and progress reviews. MCR 5.913(A)(3). Thus, except for progress reviews, referees who conduct hearings during the dispositional phase must be licensed to practice law in Michigan.

Referees may administer oaths and examine witnesses, and, if a case requires a hearing and taking of testimony, the referee must make a written

signed report to the judge containing a summary of the testimony taken and a recommendation for the court's findings and disposition. MCL 712A.10(1)(b)–(c); MSA 27.3178(598.10)(1)(b)–(c). Referees do not have authority to enter orders.

## 13.7 Time Requirements

The interval, if any, between the trial or plea hearing and the dispositional hearing is within the discretion of the court. If the child is in placement, however, the interval may not be more than 35 days, except for good cause. MCR 5.973(A)(2). “Placement” of the child means court-approved removal of a child from the parental home and placement in foster care, in a shelter home, in a hospital, or with a private treatment agency. MCR 5.903(C)(6).

Because the interval between a trial or plea hearing and a dispositional hearing is within the court's discretion, the two hearings may be combined if necessary preparations are completed prior to the hearing. Most importantly, a Case Service Plan must be prepared prior to the hearing. See MCR 5.973(A)(4)(a).\*

\*See Sections 13.9 (notice requirements) and 13.19 (Case Service Plans), below.

## 13.8 Adjournments and Continuances

The court shall adjourn a hearing or grant a continuance in a child protective proceeding only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to the factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless one of the following is also true:

- (a) The motion for adjournment or continuance is made in writing not less than 14 days before the hearing.
- (b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child's best interest. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.

MCL 712A.17(1)(a)–(b); MSA 27.3178(598.17)(1)(a)–(b).

The court rule governing adjournments and continuances, MCR 5.923(G), states that at each stage of a child protective proceeding, the court must adhere to the time limits specified in the rules. Adjournments or continuances of trials or hearings shall be granted only:

- (1) on written motion of a party filed no later than 14 days prior to the hearing, or
- (2) on motion of the court for good cause, for a period not to exceed 28 days, taking into consideration the best interests of the child.

MCR 5.923(G)(1)–(2). Thus, the court rule does not require factual findings of good cause to be made on the record, and requires good cause for the adjournment or continuance only when the motion is made by the court.

**Note:** The statutory amendment became effective March 31, 1998. See 1997 PA 169. The court rule provisions were ordered to be effective April 1, 1998. See 456 Mich ccxii–ccxiii, ccxv (1998). Therefore, the court rule provisions governing adjournments and continuances supersede those in the statute. MCR 1.104.

## 13.9 Notice Requirements

Unless the dispositional hearing is held immediately after a trial or plea hearing,\* notice of hearing may be given:

F by scheduling it on the record in the presence of the parties, or

F in accordance with MCR 5.920.\*

MCR 5.973(A)(1).

If a child is placed outside of his or her home, and if a physician has diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture that is diagnosed as a result of abuse or neglect, or drug exposure, the court must allow the child's attending or primary care physician to testify regarding the Case Service Plan at a judicial proceeding to determine if the child is to be returned home, which includes an initial dispositional hearing. MCL 712A.18f(6)–(7); MSA 27.3178(598.18f)(6)–(7). The court must notify each physician of the time and place of the hearing.\*

\*See Section 13.7, above.

\*See Section 5.5.

\*This requirement is effective March 1, 1999. 1998 PA 479. See Sections 13.18 and 13.20, below, for a detailed discussion.

## 13.10 Requirements for Valid Orders Directed to Parents

An order directed to a parent shall not be binding unless the parent has been given an opportunity for a hearing pursuant to the issuance of a summons or notice as provided in sections 12 and 13 of the Juvenile Code. MCL 712A.18(4); MSA 27.3178(598.18)(4).\*

\*See Section 5.1 for a summary of time and notice requirements.

### 13.11 Parties Who May Be Present at Initial Dispositional Hearings

\*See Section 13.13, below, for new requirements regarding appointment of counsel for children.

The child may be excused from the dispositional hearing as the interests of the child require, provided that the child's guardian ad litem or attorney is present at the hearing. MCR 5.973(A)(3)(a).\*

The respondent has the right to be present or may appear through legal counsel. MCR 5.973(A)(3)(b). The court may proceed in the absence of parties provided that proper notice has been given. MCR 5.973(A)(3)(c).

### 13.12 Appointment of Attorney for Respondent

\*See Section 7.9, for a more detailed discussion.

If the respondent is not represented by an attorney, the respondent may request and receive a court-appointed attorney at the dispositional hearing. See MCR 5.915(B)(1)(a)(ii) and MCL 712A.17c(4)(a)–(c); MSA 27.3178(598.17c)(4)(a)–(c).\*

### 13.13 Appearance of Lawyer-Guardian Ad Litem for Child

\*See Sections 7.10–7.11 for a detailed discussion of the powers and duties of lawyer-guardians ad litem.

The court must appoint a lawyer-guardian ad litem to represent the child, and the child may not waive the assistance of a lawyer-guardian ad litem. MCL 712A.17c(7); MSA 27.3178(598.17c)(7). MCL 712A.17d(1)(g); MSA 27.3178(598.17d)(1)(g), provides that the lawyer-guardian ad litem must attend all hearings, including dispositional hearings, and substitute representation for the child only with court approval.\*

### 13.14 Appointment of Guardians Ad Litem\*

\*See Section 7.13 for a detailed discussion.

The court may appoint a guardian ad litem for the child. MCL 712A.17c(10); MSA 27.3178(598.17c)(10). In addition, if the court finds that the welfare of a party requires it, the court may appoint a guardian ad litem for that party. MCR 5.916(A).

### 13.15 Appearance of Prosecuting Attorney

\*See Section 7.14, for a more detailed discussion.

If the court requests, the prosecuting attorney must appear at any proceeding. MCR 5.914(A).\*

### 13.16 Rules of Evidence at Initial Dispositional Hearings

The Michigan Rules of Evidence do not apply at the initial dispositional hearing. All relevant and material evidence, including oral and written reports, may be received and relied upon to the extent of its probative value,



even though such evidence may not be admissible at trial. MCR 5.973(A)(4)(a). The parties may challenge the weight to be given written reports, especially since such reports generally contain “hearsay within hearsay.” See Sections 11.6(F) and 11.6(G).

## A. Consideration of Case Service Plan, Reports, and Other Information

Before the court enters an order of disposition, it must consider the Case Service Plan\* and any written or oral information offered concerning the child from the child’s parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or lawyer-guardian ad litem, attorney, or guardian ad litem. MCL 712A.18f(4); MSA 27.3178(598.18f)(4), and MCR 5.973(A)(4)(a). The court must also consider any other evidence or information offered, including the appropriateness of parenting time, bearing on the disposition. MCL 712A.18f(4); MSA 27.3178(598.18f)(4).

Written reports, other than those portions made confidential by law, Case Service Plans, and court orders, including all updates and revisions, must be available to the foster parent, child caring institution, or relative with whom the child is placed. MCR 5.973(A)(4)(c).

If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, the agency must report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home. MCR 5.973(A)(4)(a).\*

## B. Opportunity to Controvert Written Reports

The parties must be given an opportunity to examine and controvert written reports received by the court, and parties may be allowed to cross-examine individuals making reports when the individuals are reasonably available. MCR 5.973(A)(4)(b). However, the foster parent, child caring institution, or relative with whom the child is placed do not have the right to cross-examine individuals making written reports or the right to controvert such reports beyond the making of a written or oral statement concerning the child as provided in MCR 5.973(A)(4)(a). MCR 5.973(A)(4)(c).\*

**Note:** It may avoid delay to require the petitioner to list evidence that will be tendered by written report, and to provide that list to the attorneys for the respondent and child. If either attorney wants to cross-examine the author of a report, that attorney may subpoena him or her.

\*See Section 13.19, below.

\*See Section 13.22, below, for a discussion of the “reasonable efforts” requirement.

\*See Section 13.16(A), immediately above.

\*This rule is effective March 1, 1999. 1998 PA 480. See Section 7.11 (powers and duties of lawyer-guardians ad litem).

Neither the court nor another party to the case may call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. MCL 712A.17d(3); MSA 27.3178(598.17d)(3).\*

### C. In-Camera Conferences Prohibited

In *In re Crowder*, 143 Mich App 666 (1985), the Court of Appeals found error in the trial court's holding an in-camera conference with one of the respondent-parent's children. After noting that such conferences are allowed in child custody cases to determine the child's preference, the Court held that they should not be held in child protective proceedings if the child is to discuss facts in dispute.

## 13.17 Abrogation of Privileges

Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made under the Child Protection Law. MCL 722.631; MSA 25.248(11).

\*See Sections 2.5–2.6 for a discussion of mandatory and non-mandatory reporting of abuse and neglect.

In *In re Brock*, 442 Mich 101 (1993), the parent's neighbor, who baby-sat for the children, reported suspected abuse, and testimony of a psychologist and a physician was admitted to show the parent's fitness for custody of a child not the subject of the proceeding. The Michigan Supreme Court held that abrogation of privileges under MCL 722.631; MSA 25.248(11), does not depend upon whether reporting was required or not, or whether the proffered testimony concerned the abuse or neglect that gave rise to the protective proceeding. *Id.*, at 117. Instead, the testimony must result from a report of abuse or neglect and be relevant to the proceeding. *Id.*, at 119–20. In *Brock*, a physician and psychologist were permitted to testify concerning a parent's past history of mental illness despite the fact that a neighbor reported the suspected neglect that gave rise to the proceeding.\*

In addition to the abrogation of privileges under the Child Protection Law, MCR 5.973(A)(4)(d) provides that no assertion of an evidentiary privilege, other than the attorney-client privilege, shall prevent the receipt and use, during the dispositional phase of a proceeding, of materials prepared pursuant to a *court-ordered* examination, interview, or course of treatment.

\*This requirement is effective March 1, 1999. 1998 PA 479.

## 13.18 Required Review of Case by Child's Physician\*

To ensure that the Case Service Plan addresses the child's medical needs in relation to abuse and neglect, the Family Independence Agency is required to review the case with the child's attending or primary care physician if a physician has diagnosed the child's abuse or neglect as involving one or more of the following:

- F failure to thrive;
- F Munchausen Syndrome by Proxy;
- F Shaken Baby Syndrome;
- F a bone fracture that is diagnosed as being the result of abuse or neglect;  
or
- F drug exposure.\*

MCL 712A.18f(6)(a)–(e); MSA 27.3178(598.18f)(6)(a)–(e).

### A. Definition of “Failure to Thrive”

“Failure to thrive is the condition in the child when he has failed to gain weight as expected for normal growth. This may mean either that (a) the child has actually lost weight, or (b) the child’s rate of gaining weight is inadequate. Failure to thrive may be the result of a disease, or the result of inadequate nutrition in an otherwise healthy child. When it is the result of inadequate nutrition, it is called Non-Organic Failure to Thrive.

....

“[However], [i]t is very important to realize that non-organic failure to thrive is not only a nutritional problem. It cannot be ‘fixed’ by instruction alone. It is a pervasive problem of the mother being unable to perceive her baby’s needs. She rejects her baby and may often be frankly hostile.”

Cantwell & Rosenberg, *Child Neglect* (Reno: University of Nevada, National Council of Juvenile and Family Court Judges, 1990), p 58.

### B. Definition of “Munchausen Syndrome by Proxy”

“Munchausen Syndrome by Proxy (MSBP) is a rare but serious form of child abuse/neglect wherein the parent, overwhelmingly the mother, falsifies illness in the child and then repeatedly presents the child for medical care, disclaiming any knowledge as to the cause of the child’s illness. For example, the mother may surreptitiously administer massive doses of laxative to the child, and then claim to the doctor that the child is always ill with uncontrollable diarrhoea.”

\*See MCL 722.623a; MSA 25.248(3a) (mandatory report of suspected abuse when infant has any amount of controlled substance or alcohol in its blood).

Cantwell & Rosenberg, *Child Neglect* (Reno: University of Nevada, National Council of Juvenile and Family Court Judges, 1990), pp 67–68.

### C. Definition of “Shaken Baby Syndrome”

“The term ‘shaken baby syndrome’ (SBS) was developed to explain those instances in which severe intracranial trauma occurred in the absence of signs of external head trauma. SBS is the severe intentional application of violent force (shaking) in one or more episodes, resulting in intracranial injuries to the child. Physical abuse of children by shaking usually is not an isolated event. Many shaken infants show evidence of previous trauma. Frequently, the shaking has been preceded by other types of abuse.”

Alexander & Kleinman, *Diagnostic Imaging of Child Abuse: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997), p 6.

## 13.19 Required Consideration of Case Service Plans

\*See Section 13.34 for a discussion of required revision of Case Service Plans.

The Family Independence Agency or its agent must prepare a Case Service Plan and make it available to the court and all parties. MCL 712A.18f(2); MSA 27.3178(598.18f)(2). Before the court enters an order of disposition, it must consider the Case Service Plan. MCL 712A.18f(4); MSA 27.3178(598.18f)(4), and MCR 5.973(A)(4)(a) and MCR 5.973(A)(5)(b).<sup>\*</sup> See also MCL 712A.13a(1)(c); MSA 27.3178(598.13a)(1)(c) (Case Service Plan may be referred to as “parent/agency agreement” or “parent/agency treatment plan and service agreement”).

The Case Service Plan must provide for placing the child in the most family-like setting available and in as close proximity to the child’s parents’ home as is consistent with the child’s best interests and special needs. MCL 712A.18f(3); MSA 27.3178(598.18f)(3), and MCL 712A.1(3); MSA 27.3178(598.1)(3) (if removed from home, child should receive care as nearly as possible equivalent to the care that should have been given).

The Case Service Plan must include, but not be limited to,<sup>\*</sup> the following:

- F the type of home or institution in which the child is to be placed and the reasons for the selected placement;
- F efforts to be made by the child’s parent to enable the child to return to his or her home;
- F efforts to be made by the agency to return the child to his or her home;
- F schedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child’s

\*See FIA Services Manual, Children & Youth, Items 722.6, 722.8, and 722.9, for additional information on Case Service Plans.

return to his or her home or to facilitate the child's permanent placement; and

- F unless parenting time, even if supervised, would be harmful to the child as determined by the court under MCL 712A.13a; MSA 27.3178(598.13a), or otherwise, a schedule for regular and frequent parenting time between the child and his or her parent, which shall not be less than once every seven days.

MCL 712A.18f(3)(a)–(e); MSA 27.3178(598.18f)(3)(a)–(e).

**Note:** The Case Service Plan should specifically address the conditions leading to the child's removal from his or her home, the child's safety, and parenting time. It should not be "formulaic" but should give the parent specific direction on how to improve the condition leading to the child's removal.

### 13.20 Required Testimony by Child's Physician Regarding Case Service Plan\*

If a child is placed outside of his or her home and the Family Independence Agency is required to review the child's case with a physician under MCL 712A.18f(6); MSA 27.3178(598.18f)(6),\* the court must allow the child's attending or primary care physician to testify regarding the Case Service Plan at a judicial proceeding to determine if the child is to be returned home, which includes an initial dispositional hearing. The court must notify each physician of the time and place of the hearing. MCL 712A.18f(7); MSA 27.3178(598.18f)(7).

\*This requirement is effective March 1, 1999. 1998 PA 479.

\*See Section 13.18, above.

### 13.21 Court-Ordered Compliance With Case Service Plan by "Nonparent Adult"\*

The court may issue an order that affects a "nonparent adult" and that does one or more of the following:

- F requires the "nonparent adult" to participate in the development of a Case Service Plan;\*
- F requires the "nonparent adult" to comply with a Case Service Plan; and/or
- F permanently restrains the "nonparent adult" from coming into contact with or within close proximity of the child.

\*These provisions are effective July 1, 1999. See 1998 PA 530.

\*See Section 13.19, above.

\*See also Sections 3.4 (jurisdiction over “nonparent adults”), 7.23 (orders after preliminary hearing), and 16.11 (notice requirements).

\*See Section 2.2(C) for the definition of “person responsible for the child’s health or welfare.”

\*See Section 3.20.

\*See Sections 3.19 and 13.24(G), below.

MCL 712A.6b(1)(a), (b), and (d); MSA 712A.6b(1)(a), (b), and (d).\*

A “nonparent adult” is a person 18 years old or older who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under MCL 712A.2(b); MSA 27.3178(598.2)(b):

- F the person has substantial and regular contact with the child;
- F the person has a close personal relationship with the child’s parent or with a “person responsible for the child’s health or welfare”;\* and
- F the person is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.

MCL 712A.13a(1)(g)(i)–(iii); MSA 27.3178(598.13a)(1)(g)(i)–(iii).

A “nonparent adult” who violates an order issued by the court pursuant to §6b of the Juvenile Code is guilty of a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than \$1000.00, or both. Subsequent violations are punishable as felonies by imprisonment for not more than two years, a fine of not more than \$2000.00, or both. Moreover, §6b of the Juvenile Code does not prohibit a “nonparent adult” from being charged with, convicted of, or punished for any other violation of law he or she commits while violating an order issued under this section of the Juvenile Code. MCL 712A.6b(2)–(4); MSA 27.3178(598.6b)(2)–(4).

In addition, the court may exercise its criminal or civil contempt powers for a violation of §6b of the Juvenile Code. MCL 712A.6b(5); MSA 27.3178(598.6b)(5).\*

MCL 712A.6b; MSA 27.3178(598.6b), does not affect the authority or jurisdiction of the court to issue orders affecting adults under MCL 712A.6; MSA 27.3178(598.6). MCL 712A.6b(6); MSA 27.3178(598.6b)(6).\*

## 13.22 Required Ruling on “Reasonable Efforts” Determination

**Note:** The required determination of whether “reasonable efforts” have been made to avoid removal or to reunify the family originates in federal law. See Benchnotes 2 and 3.

If an agency advises the court against placing a child in the custody of the child’s parent, guardian, or custodian, the agency must report in writing to the court what efforts were made to prevent the child’s removal from the home. The report must include all of the following:

- (a) if services were provided to the child and his or her parent, guardian, or custodian, the services, including in-home services, that were provided;

(b) if services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided;

(c) likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian; and

(d) likely harm to the child if the child were to be returned to his or her parent, guardian, or custodian.

MCL 712A.18f(1)(a)–(d); MSA 27.3178(598.18f)(1)(a)–(d).

After consideration of this written report, the court must include a statement in the order of disposition as to whether reasonable efforts have been made to prevent the child's removal from his or her home, or to rectify the conditions that caused the child's removal from his or her home. MCR 5.973(A)(5)(c)(i)–(ii) and MCL 712A.18f(4); MSA 27.3178(598.18f)(4).\*

\*See Forms  
JC 19 and  
JC 26.

### 13.23 Required Notice of Right to Seek Review of Referee's Recommended Findings and Conclusions

If a referee conducts the initial dispositional hearing, at the conclusion of the hearing, the referee must inform the minor, the parent, and the respondent of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 5.991(B).\*

\*See Chapter  
14.

## Part III — Dispositional Options

### 13.24 Dispositional Options Available to Court

If the child is found to be within the jurisdiction of the court and there was no request for termination of parental rights at the initial dispositional hearing,\* the court may order one or more of the dispositional alternatives contained in MCL 712A.18(1); MSA 27.3178(598.18)(1), that are appropriate for the welfare of the child and society in view of the facts proven and ascertained. MCR 5.973(A)(5)(a) and MCL 712A.18(1); MSA 27.3178(598.18)(1).

\*See Section  
13.4, above  
(termination of  
parental rights  
at initial  
dispositional  
hearings).

The court's dispositional options are as follows:

## A. Warning to Child's Parents and Dismissal of Petition

The court may warn the child's parents, guardian, or custodian and dismiss the petition. MCL 712A.18(1)(a); MSA 27.3178(598.18)(1)(a).

\*See Form  
JC 17.

## B. In-Home Placement With Supervision\*

The court may place the child under supervision in the child's own home or in the home of an adult who is related to the child. MCL 712A.18(1)(b); MSA 27.3178(598.18)(1)(b).

\*See Section  
13.24(C),  
immediately  
below, for a  
discussion of  
required  
procedures  
before placing  
the child in a  
relative's home.

As used in this subsection, "related" means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by blood, marriage, or adoption. The court shall order the terms and conditions of supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court deems necessary for the physical, mental, or moral well-being and behavior of the child. MCL 712A.18(1)(b); MSA 27.3178(598.18)(1)(b).\*

\*See also  
Section 3.16  
for a discussion  
of required  
procedures  
when another  
court has  
continuing  
jurisdiction.

In *In re Brown*, 171 Mich App 674 (1988), the Court of Appeals affirmed the trial court's placement of the children with their father, where custody had previously been awarded to the respondent-mother in divorce proceedings, but where the respondent-mother pled no contest to physically abusing one of the children in the protective proceeding.\*

\*See Form  
JC 26.

## C. Placement in Foster Care\*

The court may place the child in a suitable foster care home not subject to the court's supervision. MCL 712A.18(1)(c); MSA 27.3178(598.18)(1)(c).

"Foster care" means care provided to a child in a foster family home or group home, a child caring institution, or a relative's home pursuant to a court order. MCR 5.903(C)(4) and MCL 712A.13a(1)(d); MSA 27.3178(598.13a)(1)(d). In *Mayberry v Pryor*, 422 Mich 579, 586–87 (1985), the Michigan Supreme Court described the purpose of foster care placements:

"Finally, the goal of foster care is not to create a new 'family' unit or encourage permanent emotional ties between the child and foster parents. Foster care is designed to provide a stable, nurturing, noninstitutionalized environment for the child while the natural parent or caretaker attempts to remedy the problems which precipitated the child's removal or, if parental rights have been



terminated, until suitable adoptive parents are found.” (Citations omitted.)

However, two types of foster care placements may be permanent. A child may be a party to a “permanent foster family agreement,” or be placed with a relative in a placement intended to be permanent. These types of placements alter the schedule of required review hearings. See MCL 712A.19(4); MSA 27.3178(598.19)(4).\*

\*See Section 16.8 for these time requirements.

A “permanent foster family agreement” is an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the Family Independence Agency. MCL 712A.13a(1)(h); MSA 27.3178(598.13a)(1)(h). The agreement must be among all of the following:

- (i) the child;
- (ii) if the child is a temporary ward, the child’s family;
- (iii) the foster family; and
- (iv) the child placing agency responsible for the child’s care in foster care.

MCL 712A.13a(1)(h)(i)–(iv); MSA 27.3178(598.13a)(1)(h)(i)–(iv). For the requirements for Permanent Foster Family Agreements, see *FIA Services Manual, Children & Youth*, Item 722.7, p 20.

If the child is placed in a relative’s home, or if the child’s original placement in a relative’s home is continued in the order of disposition, within seven days of the placement, a central registry clearance and criminal history check must be performed by the Family Independence Agency. In addition, the court must order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement. MCL 712A.13a(9); MSA 27.3178(598.13a)(9).\*

\*See Forms JC 11a and 26.

#### **D. Commitment to a Private Institution or Agency\***

\*See Form JC 26.

The court may place the child in or commit the child to a private institution or agency approved or licensed by the Department of Consumer and Industry Services for the care of children of similar age, sex, and characteristics. MCL 712A.18(1)(d); MSA 27.3178(598.18)(1)(d).

The religious affiliation of the child must be protected by placement in or commitment to a private child-placing or child-caring agency or institution, if available. MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e).

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24; MSA 27.3178(598.24).

Committing the child to a private institution or agency does not divest the Family Division of jurisdiction unless the child is adopted in a manner provided by law. MCL 712A.5; MSA 27.3178(598.5).

## E. Commitment to a Public Institution or Agency

\*See Form  
JC 26.

The court may commit\* the child to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive children of similar age, sex, and characteristics. MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e). See also MCL 400.55(h); MSA 16.455(h) (referral to FIA for subsequent placement), and MCL 400.203(b); MSA 25.383(b) (commitment to the Michigan Children's Institute for period of observation not to exceed 90 days).

The religious affiliation of the child must be protected by placement in or commitment to a private child-placing or child-caring agency or institution, if available. MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e).

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24; MSA 27.3178(598.24).

\*See Section  
13.27, below,  
for a discussion  
of  
reimbursement  
for costs of care  
outside home.

MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e), further provides that in every order of commitment under this provision to the Michigan Children's Institute, the court shall name the superintendent of the institute as a special guardian to receive benefits due the child from the government of the United States, and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution that the parent or parents are found unable to pay.\*

\*See also  
Sections 13.18,  
above  
(physician  
participation in  
Case Service  
Plan) and  
13.26, below  
(requirements  
of the child's  
supervising  
agency  
concerning  
medical care).

## F. Orders for Health Care\*

The court may provide the child with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items as the court considers necessary. MCL 712A.18(1)(f); MSA 27.3178(598.18)(1)(f).

## G. Orders to Parents to Refrain From Conduct Harmful to Child

\*See Section  
13.10, above,  
for notice  
requirements  
for valid orders  
directed to  
parents.

The court may order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the child to come within or to remain under the court's jurisdiction, or that obstructs placement or commitment of the child pursuant to a dispositional order. MCL 712A.18(1)(g); MSA 27.3178(598.18)(1)(g). See also MCL 712A.6; MSA 27.3178(598.6) (Family Division has jurisdiction over adults and may make such orders affecting adults the court finds necessary for physical, mental, or moral well-being of children under its jurisdiction).\*

In *In re Macomber*, 436 Mich 386, 393, 398 (1990), the Michigan Supreme Court found that the trial court's authority to make dispositional orders extends beyond remedies listed in MCL 712A.18; MSA 27.3178(598.18). The Court stated the following:

“Thus, we hold that the Legislature has conferred very broad authority to the probate court. There are no limits to the ‘conduct’ [under MCL 712A.18(1)(g); MSA 27.3178(598.18)(1)(g)] which the court might find harmful to a child. The Legislature intended that the court be free to define ‘conduct’ as it chooses. Moreover, in light of the directive that these provisions are to be ‘liberally construed’ [under MCL 712A.1(3); MSA 27.3178(598.1)(3)] in favor of allowing a child to remain in the home, we find these sections supportive of the court's order prohibiting the father from living with his daughter.” *Macomber*, *supra*, at 393.\*

\*See also Sections 7.19 (requirements to order an alleged abuser out of the child's home), 7.23, and 13.21 (authority to enter orders affecting “nonparent adults”).

The Court also held that the trial court properly ordered the father to pay support for his daughter. *Id.*, at 394.

## H. Appointment of Guardian for Child

The court may appoint a guardian under MCL 700.424; MSA 27.5424, pursuant to a petition filed with the court by a person interested in the welfare of the child. If the court appoints a guardian pursuant to this subdivision, it may enter an order dismissing the petition under this chapter. MCL 712A.18(1)(h); MSA 27.3178(598.18)(1)(h).\*

\*See Benchnote 7 for guidelines for the appointment of guardians in child protective proceedings.

### 13.25 Orders to Comply With Case Service Plans

The court may order compliance with all or any part of the Case Service Plan, and the court may enter such orders as it considers necessary in the interest of the child. MCL 712A.18f(4); MSA 27.3178(598.18f)(4), and MCR 5.973(A)(5)(b). See *In re Draper*, 150 Mich App 789, 801 (1986) (court may order parent to attend counseling as part of order of disposition).\*

\*See Section 13.21, above, for discussion of the court's authority to order “nonparent adults” to comply with the Case Service Plan.

### 13.26 Requirements for Medical Care of Child Placed in Foster Care

The child's supervising agency must ensure that the child receives a medical examination when the child is first placed in foster care. One objective of this initial examination is to provide a record of the child's medical and physical status upon entry into foster care. MCL 722.954c(5); MSA 25.359(4c)(5).\*

\*See also Sections 8.6–8.7 and 8.10 (court-ordered examination of child).

The agency supervising the child's care must obtain from the parent, guardian, or custodian the name and address of the child's medical provider and a signed document for the release of the child's medical records. The child's medical provider must remain constant while the child is in foster care, unless the child's current primary medical provider is a managed care health plan, or unless requiring the medical provider to remain constant would create an unreasonable burden for the relative, foster parent, or other custodian of the child. MCL 722.954c(1); MSA 25.359(4c)(1).

A "medical passport" must be developed by the supervising agency for each child coming within its care. These must contain:

- (a) all medical information required by policy or law to be provided to foster parents;
- (b) basic medical history;
- (c) a record of all immunizations; and
- (d) any other information concerning the child's physical and mental health.

MCL 722.954c(2)(a)–(d); MSA 25.359(4c)(2)(a)–(d). Foster care workers who transfer medical passports must sign and date them, verifying that the worker has sought and obtained the required information and any additional information required by Family Independence Agency policy. MCL 722.954c(3); MSA 25.359(4c)(3).

If the child under the care of the supervising agency has suffered sexual abuse, serious physical abuse, or mental illness, the supervising agency must have an experienced and licensed mental health professional as defined in MCL 330.1100b(14)(a) or (b); MSA 14.800(100b)(14)(a) or (b), or a social worker certified under MCL 339.1606; MSA 18.425(1606), who is trained in children's psychological assessments, perform an assessment or psychological evaluation of the child. MCL 722.954c(4); MSA 25.359(4c)(4).

## Part IV — Orders for Reimbursement of Costs of Care

### 13.27 Orders for Reimbursement of Costs When Child Is Placed Outside of Home

An order of disposition placing a child in or committing a child to care outside of the child's home and under state or court supervision shall contain a provision for reimbursement by the parent, guardian, or custodian to the court for the cost of care or service. MCL 712A.18(2); MSA 27.3178(598.18)(2).\*

\*See Form  
JC 26.

## A. Amount of Reimbursement

The order shall be reasonable, taking into account both the income and resources of the child, parent, guardian, or custodian.\*

The amount may be based upon the guidelines and model schedule created by the State Court Administrator. MCL 712A.18(2); MSA 27.3178(598.18)(2). The guidelines and model schedule may be used when a child is placed within or outside of the home. MCL 712A.18(6); MSA 27.3178(598.18)(6).\*

If the child is receiving an adoption support subsidy pursuant to MCL 400.115j; MSA 16.490(25j), the amount of reimbursement ordered shall not exceed the amount of the support subsidy. MCL 712A.18(2); MSA 27.3178(598.18)(2).

\*See Forms JC 34, 37, and 38.

\*The guidelines and model schedule are available through SCAO.

## B. Duration of Reimbursement Order

The reimbursement provision applies during the entire period the child remains in care outside of the child's own home and under state or court supervision, unless the child is in the permanent custody of the court. MCL 712A.18(2); MSA 27.3178(598.18)(2).

MCL 712A.18(2); MSA 27.3178(598.18)(2), does not establish an unqualified mandate that a parent reimburse the state for the entire cost it incurs in caring for the parent's child. The amount need only be reasonable, considering the criteria enumerated in the statute. *In re Brzezinski*, 454 Mich 889, 890–91 (1997) (reversing by summary disposition the Court of Appeals and adopting the dissent by Griffin, PJ, at 214 Mich App 652, 675 (1995)). However, because the reimbursement order is included in the order of disposition, the court must necessarily order reimbursement before it is aware of the total amount of expenses that the state will incur in caring for the child. Thus, the provision of MCL 712A.18(2); MSA 27.3178(598.18)(2), that states that the "reimbursement provision applies during the entire period the child remains in care outside of the child's own home" provides a mechanism by which the court may determine the total amount of the parent's reimbursement obligation. *Id.*, at 677. Moreover, MCL 712A.18(2); MSA 27.3178(598.18)(2), provides that collection of the balance due on reimbursement orders may be made after the child is released or discharged from care. See also *In re Macomber*, 436 Mich 386, 394 (1990) (reimbursement orders under MCL 712A.18(2); MSA 27.3178(598.18)(2), and MCL 712A.18(3); MSA 27.3178(598.18)(3), indicate broad power of court to order parents to act in interest of child).

## C. Collection and Disbursement of Amounts Collected

The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a child is released or discharged from care outside the child's own

home and under state or court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. MCL 712A.18(2); MSA 27.3178(598.18)(2).

The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the child's own home and under state or court supervision. MCL 712A.18(2); MSA 27.3178(598.18)(2).

The court may also collect benefits paid by the government of the United States to the parent of a child for the cost of care of a court ward. MCL 712A.18(2); MSA 27.3178(598.18)(2).

Money collected for children placed with or committed to the Family Independence Agency shall be accounted for and reported on an individual child basis. MCL 712A.18(2); MSA 27.3178(598.18)(2).

#### D. Delinquent Accounts

\*See Form  
JC 61.

In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service.\* MCL 712A.18(2); MSA 27.3178(598.18)(2).

\*See Form  
JC 60.

The court shall send to the person who is the subject of the intercept order advanced written notice\* of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. MCL 712A.18(2); MSA 27.3178(598.18)(2).

\*See Form  
JC 62.

The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.\* MCL 712A.18(2); MSA 27.3178(598.18)(2).

\*See Section  
3.20 for a  
discussion of  
the Family  
Division's  
jurisdiction of  
contempt  
proceedings.

**Note:** The court may punish by the contempt power even after it has terminated jurisdiction over the child. See Form JC 36 (Request and Order Terminating Court Jurisdiction), where the right to enforce payments of any delinquent account or unpaid reimbursement order is reserved.\*

#### E. Copy of Reimbursement Order to Department of Treasury

If the court issues an order in respect to payments by a parent under MCL 712A.18(2); MSA 27.3178(598.18)(2), a copy shall be mailed to the Department of Treasury. Action taken against parents or adults shall not be released for publicity unless the parents or adults are adjudged guilty of contempt of court. The court shall furnish the Family Independence Agency with the reports of the administration of the court in a form recommended

by the Michigan Association of Probate and Juvenile Court Judges. Copies of these reports shall, upon request, be made available to other state departments by the Family Independence Agency. MCL 712A.28(3); MSA 27.3178(598.28)(3).

### 13.28 Orders for Reimbursement of Costs When Child Is Placed Under Supervision in Child's Own Home

An order of disposition placing a child under supervision in the child's own home may contain a provision for the reimbursement by the parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount due shall be determined and treated in the same manner provided for an order under MCL 712A.18(2); MSA 27.3178(598.18)(2), dealing with reimbursement for cost of care outside the child's own home. MCL 712A.18(3); MSA 27.3178(598.18)(3).\*

The guidelines and model schedule developed by the State Court Administrator's Office pursuant to MCL 712A.18(2); MSA 27.3178(598.18)(2), may be used for determining the amount of reimbursement when a child is placed within or outside of the home. MCL 712A.18(6); MSA 27.3178(598.18)(6).

\*See Section 13.27, above. Note that reimbursement for costs when the child is placed in the home is discretionary, not mandatory, as when the child is placed outside the home.

### 13.29 Orders for Reimbursement of Attorney Fees

If the court appoints a "lawyer-guardian ad litem" and/or an attorney to represent a child, parent, guardian, or custodian, the court may enter an order requiring the parent, guardian, or custodian to reimburse the court for attorney fees. MCL 712A.18(5); MSA 27.3178(598.18)(5), MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D). An order assessing attorney costs may be enforced through contempt proceedings.\* MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D). See also MCR 5.916(D) (reimbursement for costs of guardian ad litem may also be ordered).

\*See Forms JC 38, 39, and 40.

### 13.30 Use of Wage Assignments to Pay Reimbursement Orders

MCL 712A.18b; MSA 27.3178(598.18b), states that whenever the court enters a reimbursement order and the parent or other adult legally responsible for the care of the child fails or refuses to obey and perform the order, and has been found guilty of contempt of court for such failure or refusal, the court making the order may order\* an assignment to the county or state of the salary, wages, or other income of the person responsible for the care of the child, which assignment shall continue until the support is paid in full. The order of assignment shall be effective one week after service upon the employer of a true copy of the order by personal service or by registered or certified mail.

\*See Form JC 39.

\*See Form  
JC 58.

Thereafter the employer shall withhold from the earnings due to the employee the amount specified in the order of assignment for transmittal to the county or state until notified by the court that the support arrearage is paid in full.\* An employer shall not use the assignment as a basis, in whole or in part, for the discharge of the employee or for any other disciplinary action against an employee. Compliance by an employer with an order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected. MCL 712A.18b; MSA 27.3178(598.18b).

## Part V — Post-Disposition Orders and Notices

\*See Section  
3.16 for a  
complete  
discussion of  
required  
procedures.

### 13.31 Notice to Courts With Prior Continuing Jurisdiction\*

Under MCL 712A.3a; MSA 27.3178(598.3a), where the child is subject to a prior or continuing order of any other court of this state, notice must be sent to such other court of any order subsequently entered under the Juvenile Code. See also MCR 5.927.

### 13.32 Notice of Dispositional Review Hearings

\*See Section  
5.6 for a list of  
persons to be  
notified of  
review  
hearings.

The court must ensure that written notice of a review hearing is given to “the appropriate persons” pursuant to MCR 5.920 and MCR 5.921(B)(2). MCR 5.973(B)(4).\* The court should ensure that the attorneys for both parent and child are notified of the review hearing.

**Note:** Obtaining a written waiver of notice of hearing at the conclusion of a hearing during the dispositional phase of proceedings (except where proceedings to terminate parental rights will be initiated) may be expedient. Respondents often move during the dispositional phase of child protective proceedings, and obtaining a written waiver of notice prior to the hearing date eliminates later problems associated with locating those respondents who have moved in the interim.

### 13.33 Accelerated Review Hearing

\*See Section  
16.9 for a list of  
factors to  
consider when  
deciding  
whether to  
accelerate  
review  
hearings.

At the initial dispositional hearing, the court must decide whether it will conduct the next review hearing before it is required under MCL 712A.19(2)–(4); MSA 27.3178(598.19)(2)–(4). MCL 712A.19(9); MSA 27.3178(598.19)(9), and MCR 5.973(B)(3).\*



### 13.34 Required Revision of Case Service Plans

If the child continues in placement outside of his or her home, the Case Service Plan must be updated and revised at 90-day intervals. MCL 712A.18f(5); MSA 27.3178(598.18f)(5).

When revising and updating the Case Service Plan, the Family Independence Agency must consult with the foster parent and attach a summary of the information received from the foster parent to the revised Case Service Plan. Updated and revised Case Service Plans must be available to the court and all parties. MCL 712A.18f(5); MSA 27.3178(598.18f)(5).

### 13.35 Provision of Records to Child's Foster Care Provider\*

Within 10 days after receipt of a written request, the agency must provide the foster care provider with copies of all initial, updated, and revised Case Service Plans and court orders relating to the child, and all of the child's medical, mental health, and education reports, including reports compiled before the child was placed. MCL 712A.18f(5); MSA 27.3178(598.18f)(5), and MCL 712A.13a(13); MSA 27.3178(598.13a)(13).

Moreover, the court must include in its initial placement order:

(a) an order that the child's parent, guardian, or custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records. The order may specify providers by profession or type of institution.

MCL 712A.13a(14)(a)–(b); MSA 27.3178(598.13a)(14)(a)–(b).\*

\*These requirements may have been complied with prior to the initial dispositional hearing if the child was placed in foster care following the preliminary hearing. See Section 8.5.

\*See also Section 13.26, above.

### 13.36 Appeals of Initial Disposition Orders

A respondent-parent has an appeal by right to the Court of Appeals of an order of disposition placing a minor under the supervision of the court or removing the minor from the home. MCR 5.993(A)(1).

A respondent also has an appeal by right of an order terminating parental rights. MCR 5.993(A)(2).\*

\*See Section 13.4, above.

In *In re Hatcher*, 443 Mich 426, 437 (1993), the Court found that subject matter jurisdiction of protective proceedings is established “by the contents of the petition after the probate judge or referee has found probable cause to believe that the allegations contained within the petitions are true.” Subsequent procedural errors do not deprive the court of jurisdiction. If the trial court lacks subject matter jurisdiction, subsequent proceedings are

void; if the court has subject matter jurisdiction, subsequent errors may only result in reversal.

This means that a party who wishes to attack the court's assumption of subject matter jurisdiction must do so on direct appeal following the court's disposition, or during a rehearing. No "collateral attack" of the court's subject matter jurisdiction is possible following termination of parental rights. *Id.*, at 438–44.

### 13.37 Supplemental Orders of Disposition

\*See Section 13.24, above (court's dispositional options).

If a child remains under the jurisdiction of the court, a cause may be terminated or an order of disposition may be amended or supplemented in accordance with MCL 712A.18; MSA 27.3178(598.18),\* at any time the court considers necessary and proper. Such an amended or supplemented order is a "supplemental order of disposition." MCL 712A.19(1); MSA 27.3178(598.19)(1). See Form JC 19.